

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION FREE CONFERENCE COMMITTEE ON HB 459

Call to Order: By **Sen. William Crismore**, on April 11, 2001 at 8:07 A.M., in Room 137 Capitol.

ROLL CALL

Members Present: Sen. William Crismore, Chair
Senator Debbie Shea
Rep. Doug Mood, Vice Chair
Rep. Gary Forrester
Rep. Cindy Younkin

Members Excused: Sen. Duane Grimes

Members Absent: None.

Staff Present: Mary Vandenbosch, Legislative Branch
Jan Brown, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 459, 4/10/2001
Executive Action: HB 459

FREE CONFERENCE COMMITTEE ON HB 459

{Tape : 1; Side : A; Approx. Time Counter : 0.5 -2.7}

CHAIRMAN CRISMORE called the meeting to order.

Rep. Mood explained that this is a Free Conference Committee and would not be dealing with the Senate amendments but would deal with the language that was amended into the bill in the House. The Director of DEQ, along with the chief counsel, wrote a memo where they felt like there was a problem in the language on page 1, lines 20 through 22, because that language could be interpreted to mean that they had to do a no-action alternative even when they're doing a checklist to EPA. They were afraid that

they were going to be subjected to some sort of a court action, because the language wasn't clear. What it says is that currently in any environmental review under this part, being part 1, when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsection (1)(b)(iv)(C). That goes, then, to the new language at the bottom of that, on page 2, lines 21, 22 and 23, where it talks about the meaningful no-action alternative. The problem with that is that alternatives are considered in an environmental assessment as well as in an environmental impact statement. They had wanted that to be clear that there was a no-action alternative that should be made during the EIS. So, what they've done is dropped the language, which he believes makes it quite clear that that is the case. He distributed copies of the amendments.

{Tape : 1; Side : A; Approx. Time Counter : 2.7 - 2.8}

Motion: Rep. Mood moved that amendments numbered HB045905.amv to HB 459 do pass.

Discussion: Rep. Mood explained that what the amendment does is, in the new language on page 1, it strikes the words "that will ensure" on page 1, lines 20 and 21. It also strikes the language further on, on line 20, which starts with the word "under" and it strikes "under this part." It inserts the language shown on the last line on amendment number 2. What that then reads is in decisionmaking that may have an impact on the human environment and that in any environmental review that is not subject to subsection (1)(b)(iv), that (1)(b)(iv) is the environmental impact statement. In anything that is not an environmental impact statement, then, that's what the language is saying. When an agency considers alternatives, the alternative analysis will be in compliance with the provisions of, and then that's where the new language ends and amendment 3 is inserted. In other words, when they consider alternatives in an environmental assessment, then they have to go through the first three requirements of the new language on page 2, which does not include the no-action alternative. So, again, when they're doing an environmental assessment, then they have to comply with the first three unless it's requested by the project sponsor or if determined by the agency to be necessary, then they go to number (iv) on page 2, which is the no-action alternative. In other words, under an environmental assessment, environmental review or assessment, then they can do a no-action alternative if requested by the project sponsor or determined by the agency to be necessary. He believes that the new language being inserted on the first page makes it clear that they don't have to do a no-action alternative when they're doing an environmental assessment check-list type of assessment, that sort of thing which they currently do; but that

if it's requested or they feel it's required, then they can go ahead and do the no-action alternative. It makes it clear that they don't have to do that in every single environmental assessment. The check-list environmental reviews that they do for just standard permits, they do literally thousands of those things, so it's important to make it clear that they don't have to do the further documentation in that situation. He hadn't seen amendments 4 and 5 before and asked **Mary Vandebosch** to explain them.

Ms. Vandebosch said the first three amendments clarify the alternative analysis that's required for something that's not an EIS. It seemed like this change was necessary to subsection (4), and basically, what subsection (4) on page 4 says in the current bill is that if an agency is doing a detailed statement, which, as used in this law, means an EIS, that needs to comply with MEPA and if complying with these subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) would conflict with the federal requirements, or be inconsistent with the federal requirements, then they don't have to comply with those. So, these two amendments strike "detailed statement" and say "environmental review" so that, if they're doing either an EA or an EIS and the alternative analysis requirements conflict with the federal requirements, they just have to follow the federal requirements. **Rep. Mood** asked if a detailed statement was a code for an EIS. **Ms. Vandebosch** said that's the use of it in this law. It's a little bit confusing.

Rep. Mood said that was the essence of the changes that were being proposed and he believed that the amendments were reviewed by the department and are the department's amendments. **Ms. Vandebosch** said she was not involved in that.

{Tape : 1; Side : A; Approx. Time Counter : 9.8 - 11}

Motion/Vote: Rep. Mood moved that amendments numbered HB045905.amv to HB 459 do pass. Motion carried 5-0.

Motion/Vote: Rep. Mood moved that HB 459 as amended be recommended to the House and the Senate. Motion carried 5-0.

ADJOURNMENT

Adjournment: 8:16 A.M.

SEN. WILLIAM CRISMORE, Chairman

Jan Brown, Secretary

WC/JB

EXHIBIT (frh82hb0459aad)